

Financial Services
Richard H. Hinds, Chief Financial Officer

SUBJECT: PROPOSED AMENDMENT OF BOARD POLICY: INITIAL READING POLICY 6320.02, *SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION*

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

The School Board of Miami-Dade County, Florida, voted on November 11, 2012 to create a Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification and adopted Board Policy 6320.02 to implement the program. The intent of the program is to provide a race and gender-neutral process designed to encourage greater availability, capacity development and contract participation in School Board contracts. In an effort to allow for greater small business participation, District staff continuously reviews the program to determine whether various procedures used to enhance participation should be adjusted to achieve the stated program objectives.

Approval of these proposed policy revisions is requested to provide greater Small/Micro Business Enterprise Program availability and contract participation in Board contracts. Specifically, the policy defines all categories not previously defined in the original policy, clarifies language for Miami-Dade County based businesses, combines the construction and specialty trade categories and threshold values, revises the professional services category to create new thresholds for a new category and revises the goods and services category and threshold value.

Attached is the Notice of Intended Action and the proposed policy amendments. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 6320.02, *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 6320.02, *Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on May 7, 2014, its intention to amend Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification, at its meeting of June 18, 2014.

PURPOSE AND EFFECT: It is recommended that Board Policy 6320.02, Small/Micro Business Enterprise Program and Minority/Women Business Enterprise Certification, be amended to allow for greater small business participation, by extending the certification period, revising all thresholds and categories, adding definitions to the policy and clarifying a Miami-Dade based business location.

SUMMARY: This policy creates expanded opportunities for small and minority/women business participation in the awarding of Request for Proposals, Professional Goods and Services, Construction, Architecture/Engineering Services, Bids and other applicable procurement contracts. All procurement services shall comply with laws, rules, regulations and Board policies.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1) and (2); 1001.42(25); 1001.43(10), F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 287.093; 1001.32(2); 1013.46(1)(b), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF June 18, 2014, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide a proposal for a lower cost regulatory alternative as provided in Section 120.541(1), F.S. must do so in writing by June 3, 2014, to the Superintendent of Schools, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based (Section 286.0105, Florida Statutes).

A COPY OF THE PROPOSED AMENDED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Brian A. Williams
Supervisor: Ms. Milagros Fornell
Date: April 23, 2014

1 SMALL/MICRO BUSINESS ENTERPRISE PROGRAM AND
2 MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION

3 The Small/Micro Business Enterprise Program is established to provide expanded
4 and equitable participation by small and micro businesses in School Board
5 procurement of goods and services, construction, and professional services.

6 **Office of Economic Opportunity (OEO)**

7 The OEO shall administer and implement the Small/Micro Business Enterprise
8 Program and M/WBE Certification and:

- 9 A. enforce the Board's anti-discrimination policy in the award of
10 contracts for construction projects, procurement of goods and
11 services, and professional services;
- 12 B. provide maximum legally permissible opportunities for small and
13 minority/women business enterprises to participate in the award
14 and performance of Board contracts;
- 15 C. monitor, track and certify small businesses and minority/women
16 business enterprises;
- 17 D. enforce compliance with policy;
- 18 E. develop and implement necessary administrative procedures to fully
19 implement these programs;
- 20 F. establish insurance requirements which, although providing
21 appropriate protection, are not more restrictive than necessary to
22 protect the public's interest;
- 23 G. establish economic incentives that encourage the waiver of bonds,
24 and enhance the bonding technical assistance program;
- 25 H. establish administrative procedures to expeditiously resolve
26 monetary disputes and motivate prime contractors to make timely
27 payments;

- 1 I. establish a comprehensive contract reporting and monitoring system
2 to evaluate the effectiveness of these programs in increasing
3 contracting opportunities for small and minority/women businesses;
- 4 J. serve as chair of the Goal-Setting Committee and staff liaison to the
5 Small Business Enterprise Advisory Committee;
- 6 K. monitor, coordinate, and provide support for any disparity study
7 that may be conducted regarding minority/women business
8 participation in Board procurement;
- 9 L. develop and coordinate any recommendations as a result of any
10 such disparity study findings;
- 11 M. maintain, distribute, and publish a directory of certified SBE, MBE,
12 and M/WBE firms; and
- 13 N. quarterly report through the Superintendent to the Board regarding
14 the effectiveness of these programs.

15 **Small Business Enterprise Advisory Committee**

16 The Small Business Enterprise Advisory Committee (SBEAC) shall be established to:

- 17 A. provide guidance on the implementation of the SBE/MBE Program
18 and to promote the participation and use of SBE/MBEs and MWBEs
19 in the procurement activities of the Board;
- 20 B. identify and evaluate issues related to economic opportunities within
21 the Board for small, micro and minority/women owned businesses;
- 22 C. provide recommendations to the Board to improve the SBE/MBE
23 program;
- 24 D. annually evaluate and report to the Board on the effectiveness of the
25 SBE/MBE program in increasing minority and women owned
26 business participation in the Board's procurement process;
- 27 E. monitor any disparity study that may be conducted by the Board
28 and make recommendations based on the results of any such study.

1 The Board and Superintendent shall each appoint a community member who is not
2 employed by the Board and does not have any direct or indirect business
3 relationship with the Board. The committee shall have representation from local
4 small, micro, minority, women, and majority business interest organizations,
5 community based organizations and local government entities which may include
6 professional, construction and trade, business, and socio-economic organizations.
7 The Board and Superintendent shall approve a list of representative organizations
8 and the Superintendent shall appoint a member nominated by each recommended
9 organization from their membership. The term of each Board appointee shall be
10 coterminous with the appointing Board member and the term of the
11 Superintendent's appointees shall be at the will and discretion of the
12 Superintendent. In no event shall any Board member serve more than four (4)
13 consecutive years. All appointments must comply with Policy 9140, Citizen Advisory
14 Committees. The Committee shall annually elect a chair and vice-chair, meet at
15 least six (6) times per year, and be governed by the latest edition of *Robert's Rules of*
16 *Order*. The committee may adopt bylaws, to be recommended by the Superintendent
17 to the Board for approval, to facilitate the operation of the committee.

18 **Small/Micro Business Enterprise Program**

19 The Small/Micro Business Enterprise (SBE/MBE) Program is a race and
20 gender-neutral process to provide greater SBE/MBE availability, capacity
21 development and contract participation in Board contracts, to advance the Board's
22 compelling interest in ensuring that it is neither an active nor passive participant in
23 private sector marketplace discrimination, and to promote equal opportunity for all
24 segments of the contracting community to participate in Board contracts.

25 **Terms and Definitions**

26 A. ***Affirmative Procurement Initiatives*** - any procurement tool to
27 enhance contracting opportunities for SBE/MBE firms including:
28 bonding waivers, bid incentives, sheltered market, mandatory
29 subcontracting, competitive business development demonstration
30 projects, and SBE/MBE evaluation preference points in the scoring
31 of proposal evaluations.

- 1 B. **Available or Availability** – to have, prior to bid submission, the
2 ability to provide goods or services under a contract by having
3 (a) reasonably estimated, uncommitted capacity; (b) all necessary
4 licenses, permits, registrations and certification, including
5 SBE/MBE certification to provide the type of goods or services being
6 purchased under the contract; (c) ability to obtain reasonably
7 required financing/insurance that is consistent with normal
8 industry practice; and (d) ability to otherwise meet bid
9 specifications.
- 10 C. **Award** – final selection of a bidder or offer or for a specified
11 contract.
- 12 D. **Award Amount** – the dollar value of the contract when awarded.
- 13 E. **Bid** – quotation, proposal, letter of interest or offer by any bidder in
14 response to any kind of invitation, solicitation, request or public
15 announcement to submit such quotation, proposal, letter of interest
16 or offer for a contract.
- 17 F. **Bidder** – any person, partnership, corporation or other business
18 entity that submits a bid or proposal.
- 19 G. **Certification** – process by which the Office of Economic
20 Opportunity (“OEO”) determines that a business meets the criteria
21 for classification as a small/micro business enterprise.

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- H. **Commercially Useful Function** - an SBE/MBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE/MBE must also be responsible for negotiating the price of contract materials and supplies, determining the quantity and quality of materials, ordering and installing materials if applicable, and paying for the materials. To determine whether an SBE/MBE is performing a commercially useful function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the SBE/MBE is to be paid under the contract is commensurate with the work it is actually performing and the SBE/MBE credit claimed for its performance of the work, and other relevant factors. Specifically, an SBE/MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful SBE/MBE participation, when in similar transactions in which SBE/MBE firms do not participate, there is no such role performed.
- I. **Construction and Construction-related Specialty Trades** - means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property.
- J. **Contract** - an agreement for purchase of goods or services, including professional services and construction. It does not include agreements to purchase, lease, or rent real property, or a grant, license, permit, franchise or concession.
- JK. **Goal** - a non-mandatory annual aspirational percentage goal for SBE/MBE contract participation established each year for professional architectural, engineering, landscape, surveying, and mapping services, construction, goods and services and other professional services. Mandatory percentage goals for SBE/MBE subcontract participation may be established on a contract-by-contract basis.
- KL. **Goal Setting Committee** - committee established by the Superintendent that is chaired by the OEO and is responsible for establishing SBE/MBE Program goals and selecting appropriate Affirmative Procurement Initiatives for application to specific Board contracts based upon industry categories, vendor availability, and project-specific characteristics.

1 only. Business firms that are owned by other businesses or by the
2 principals or owners of other businesses that cannot themselves
3 qualify under the eligibility requirements shall not be eligible to
4 participate in the program. The day-to-day management of the firm
5 must also be direct and independent of the influence of any other
6 businesses that cannot themselves qualify under the eligibility
7 requirements.

8 EQ. **Industry Categories** – procurement groupings of Board contracts
9 for administering the Affirmative Procurement Initiatives that shall
10 include construction, professional services, and goods and services
11 procurement. Industry categories may also be referred to as
12 “business categories.”

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1 Professional Services A/E shall not include Job Order Contracting
2 Consultants, Asbestos Consultants, Program Management,
3 Geotechnical, Construction Materials Testing and Environmental
4 Assessment Services.

5 UW. **Responsible** - means that a firm is capable in all respects of fully
6 performing the contract requirements and has the integrity and
7 reliability to assure good faith performance.

1 DDFF. **SBE/MBE Unavailability Certification (SBE Form - U)** - form
2 demonstrating a bidder's unsuccessful good faith effort to meet the
3 small business local participation requirements of the contract
4 which shall only be considered after proper completion of the
5 outreach and compliance efforts and methods used to notify and
6 inform SBE/MBE firms of contracting opportunities have been fully
7 exhausted.

8 EEGG. **Small Business Enterprise (SBE)** - any contractor, subcontractor,
9 manufacturer or service company (a) that has been doing business
10 under the same ownership or management and has maintained its
11 principal place of business in Miami-Dade County, Florida, for a
12 period of at least one (1) year immediately prior to the date of
13 application for certification under this section, (b) that had annual
14 gross revenues not exceeding the thresholds identified in this policy
15 for each industry, and (c) at least fifty-one percent (51%) of the
16 ownership of which is held by a person or persons who exercise
17 operational authority over the daily affairs of the business and have
18 the power to direct the management and policies and receive the
19 beneficial interests of the company. Representations regarding
20 average gross revenue and payroll are subject to audit. If a business
21 has not existed for three (3) years, the employment and gross
22 revenue limits shall be applied based upon the annual averages over
23 the course of the existence of the business.

24 FFHH. **Spend Dollars** - dollars actually paid to prime and/or
25 subcontractors and vendors for Board contracted goods and/or
26 services.

27 GGII. **Subcontractor** - any vendor or contractor that is providing goods or
28 services to a prime contractor in furtherance of the prime
29 contractor's performance under a contract or purchase order with
30 the Board.

31 HHJJ. **Subcontractor Goal** - a proportion of a total contract value stated
32 as a percentage to be subcontracted to SBE/MBEs to perform a
33 commercially useful function.

34 HKK. **Suspension** - the temporary stoppage of an SBE/MBE firm's
35 participation in the Board's contracting process for a finite period of
36 time.

1 **Application**

2 This program applies to Board contracts funded in whole or in part by Board funds
3 except where Federal or State laws or regulations prohibit its application. The
4 Superintendent has the discretion to identify classes of contracts or parts of
5 contracts that are subject to this program. The Superintendent shall also prepare
6 necessary procedures, bid and contract documents to implement the program.

7 **Subcontractor Goals**

8 Subcontractor goals may be applied to a contract based on estimates made prior to
9 bid advertisement of the quality, quantity and type of subcontracting opportunities
10 provided by the contract and the availability of SBE/MBEs to perform the work.

11 **Goal Setting Committee**

12 The Superintendent shall create and staff a Goal Setting Committee (GSC) to
13 establish SBE/MBE Program goals and select appropriate incentives to apply to
14 specific contracts based upon industry categories, vendor availability and
15 project-specific characteristics. The Superintendent shall determine the size of the
16 GSC that is to be chaired by the OEO who shall serve as a voting member. The
17 Superintendent shall also appoint the remaining members of the GSC from the
18 Board's procurement personnel and other Board departments affected by this
19 Program. The GSC shall meet as often as it determines necessary, but not less than
20 twice annually, to develop the SBE/MBE goal setting methodology to be
21 implemented by the OEO on a contract-by-contract basis, and monitor and support
22 the implementation of this policy.

23 **SBE/MBE Eligibility and Certification**

24 A. The OEO shall certify a company or other business entity as a SBE
25 or MBE upon its submission of a completed District required
26 certification form, supporting documentation, and a signed affidavit
27 stating that it meets all of the following criteria:

28 1. Is an independently owned and operated business that is not
29 dominant in its field of operation and is performing a
30 commercially useful function.

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2. ~~The business has its principal place of business in Miami Dade County for at least a year preceding the application.~~ must have an actual place of business in Miami-Dade County for at least one year preceding the application and be registered as a vendor with M-DCPS.
 3. The business has been established for at least one (1) year or the principals of the business have at least three (3) years of relevant experience prior to forming or joining the business.
 4. The business has a local business tax receipt and all required professional licenses, contractor qualifier licenses, and/or Certificate of Competency.
 5. The owner of the business must have the required professional license(s) and contractor qualification license.
 6. The Board may honor a valid Small Business Enterprise Certification and/or Micro Business Enterprise Certification granted by another agency if the agency's requirements are consistent with the District's SBE/MBE certification criteria. The Superintendent shall develop procedures to implement this policy.
- B. Additionally, the requirements for SBE/MBE Program eligibility based on industry are:
1. **Micro Business Enterprise**
 - a. **Professional Services A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$500,000.
 - b. **Professional Services Non A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$1,000,000.
 - bc. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall not exceed \$500,000 \$1,000,000.
 - ed. **Construction and Construction-related Specialty Trades:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$1,000,000.

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~~d. **Specialty Trade:** The annual gross revenue average
over the previous three (3) years shall not exceed
\$500,000.~~

2. **Small Business Enterprise**

a. **Professional Services A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).

b. **Professional Services Non A/E:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$2,000,000 (Tier 1) or \$4,000,000 (Tier 2).

bc. **Goods and Services (Procurement Program):** The annual gross revenue averaged over the previous three (3) year period shall not exceed \$1,000,000 \$2,000,000 (Tier 1) or \$2,000,000 \$4,000,000 (Tier 2).

ed. **Construction and Construction-related Specialty Trades:** The annual gross revenue averaged over the previous three (3) years shall not exceed \$3,000,000 (Tier 1) or \$6,000,000 (Tier 2).

d. ~~**Specialty Trade:** The annual gross revenue average over the previous three (3) years shall not exceed \$1,000,000 (Tier 1) or \$2,000,000 (Tier 2).~~

C. Upon receipt of a certification or re-certification application, the OEO shall review all enclosed forms, affidavits and documentation and determine whether the applicant satisfies the eligibility requirements. The OEO shall send a letter to ineligible applicants stating the basis for the denial of eligibility. Applicants determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.

D. Applicants determined eligible to participate in the program shall submit a completed re-certification form (SBE/MBE-R) every two (2) years to the OEO for review and continued certification. However, upon application for re-certification, an SBE/MBE firm must be an independently owned and operated business concern, and maintain its principal place of business or have a significant employment presence in Miami-Dade County in accordance with this policy. To qualify for recertification, the firm's average gross revenue for the three (3) fiscal years immediately preceding the application for recertification shall not exceed \$9 million for construction, \$6 million for goods and services, \$2.5 million for specialty trade, or \$2.5 million for professional services. The eligibility criteria

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1 regarding years of existence shall only apply for the initial
2 certification.

- 1 E. In considering certification or re-certification status of any firm, the
2 OEO shall periodically conduct audits and inspect the office, job
3 site, records, and documents of the firm, and shall interview the
4 firm's employees, subcontractors, and vendors as reasonably
5 necessary to ensure that all eligibility standards are satisfied and
6 that the integrity of this program is maintained.

7 **Graduation and Suspension**

8 A bidder may not count towards its SBE/MBE participation the amount
9 subcontracted to an SBE firm that has graduated or been suspended from the
10 program as follows:

- 11 A. An SBE shall be permanently graduated after its three (3) fiscal year
12 average gross revenue exceeds \$9 million for construction, or
13 \$6 million for goods and services, \$2.5 million for specialty trade,
14 and \$2.5 million for professional services.
- 15 B. When an MBE exceeds the eligibility certification thresholds, it
16 automatically graduates and is subject to the small business criteria
17 and restrictions.
- 18 C. If an SBE exceeds the size standards for the Small Business
19 Program during any fiscal year, it shall be allowed to complete any
20 pending contractual obligation(s), and its participation can be
21 counted in the goals.
- 22 D. The OEO may permanently revoke SBE/MBE eligibility if it fails to
23 perform a commercially useful function under a contract, or if it
24 allows its SBE/MBE status to be fraudulently used for the benefit of
25 a non-SBE/MBE firm or the owners of a non-SBE/MBE firm so as
26 to provide the non-SBE/MBE firm or firm owners benefits from
27 Affirmative Procurement Initiatives for which the non-SBE/MBE
28 firm and its owners would not otherwise be entitled.
- 29 E. The OEO shall provide written notice to the SBE/MBE upon
30 graduation or suspension from the SBE/MBE program including the
31 reasons.

1 **Appeals**

2 A business that is denied eligibility, whose eligibility is revoked, or who has been
3 denied a waiver request, may appeal the decision to the Superintendent. A written
4 notice of appeal must be received by the Superintendent within fifteen (15) calendar
5 days of the date of the written notice. Upon receipt of a timely notice of appeal, the
6 Superintendent shall conduct a hearing. The Superintendent shall develop
7 procedures for the appeal process and report quarterly to the Board on the status of
8 appeals.

9 **Affirmative Procurement Initiatives**

10 The following Affirmative Procurement Initiatives may be used in awarding Board
11 contracts to SBE/MBEs.

12 A. ***Bonding Waiver.*** The Board, at its discretion and consistent with
13 State law, may waive or reduce the bonding requirements depending
14 on the type of contract and whether the Board determines that the
15 bonding requirements would deny the SBE/MBE an opportunity to
16 perform the contract which the SBE/MBE has shown itself
17 otherwise capable of performing.

18 B. ***Bid Incentives:***
19 ***Evaluation Preference*** – In ranking and evaluating proposals for
20 “best value” contracts in which factors other than price are relevant
21 to the selection process, the Board may award up to twenty percent
22 (20%) of the total points available to a SBE/MBE or a joint venture
23 with an SBE/MBE partner in response to a request for proposal.

24 C. ***Mandatory Subcontracting:***
25 1. The GSC may at its discretion and on a contract-by-contract
26 basis, require that a predetermined percentage up to forty
27 percent (40%) of a specific contract be subcontracted to
28 eligible SBE/MBEs.
29 2. An SBE/MBE prime contractor may not subcontract more
30 than forty-nine percent (49%) of the contract value to a
31 non-SBE/MBE.

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3. A prospective bidder on a Board contract shall submit at the time of bid SBE/MBE – Form S providing the name of the SBE/MBE subcontractor or subcontractors and describing both the percentage of subcontracting by the SBE/MBE and the work to be performed by the SBE/MBE. A bidder may request a full or partial waiver of this mandatory subcontracting requirement from the OEO for good cause by submitting the SBE/MBE Unavailability Certification Form to the OEO prior to bid opening. Under no circumstances shall a waiver of a mandatory subcontracting requirement be granted without submission of adequate documentation of good faith efforts by the bidder and careful review by the OEO. The OEO shall determine a waiver request upon the following criteria:
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- a. whether the requestor of the waiver has made good faith efforts to subcontract with qualified and available SBE/MBE
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- b. whether subcontracting would be inappropriate and/or not provide a “commercially useful function” under the circumstances of the contract
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- c. whether there are no certified SBE/MBEs that are qualified and available to provide the goods or services required
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4. In the absence of a waiver granted by the OEO, failure of a prime contractor to commit in its bid or proposal to satisfying the mandatory SBE/MBE subcontracting goal shall render its bid or proposal non-responsive.
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5. In the absence of a waiver granted by the OEO, failure of a prime contractor to attain a mandatory subcontracting goal for SBE/MBE participation in the performance of its awarded contract shall be grounds for termination of existing contracts with the Board, debarment from performing future Board contracts, and/or any other remedies available under the terms of its contract with the Board or under the law.

- 1 6. A prime contractor is required to notify and obtain written
2 approval from the OEO in advance of any reduction in
3 subcontract scope, termination, or substitution for a
4 designated SBE/MBE Subcontractor. Failure to do so shall
5 constitute a material breach of its contract with the Board.

6 D. **Sheltered Market:**

- 7 1. The OEO and GSC may select certain contracts for award to a
8 SBE/MBE or a joint venture with a SBE/MBE through the
9 Sheltered Market program.
- 10 2. In determining whether a particular contract is eligible for the
11 Sheltered Market Program, the OEO and GSC shall consider
12 whether there are at least three (3) SBE/MBEs that are
13 capable and available to participate in the Sheltered Market
14 Program for that contract; the degree of underutilization of
15 the SBE/MBE prime contractors in the specific industry
16 categories; and the extent to which the Board's SBE/MBE
17 prime contractor utilization goals are being achieved.
- 18 3. If a responsive and responsible bid or response is not received
19 for a contract that has been designated for the Sheltered
20 Market Program, or the apparent low bid is determined to be
21 too high in price, the contract shall be removed from the
22 Sheltered Market Program.

23 **SBE/MBE Program Performance Review**

- 24 A. The OEO shall monitor the implementation of this policy and the
25 progress of this program. On a quarterly basis, the OEO shall
26 report to the Superintendent and Board on the progress of achieving
27 the goals and objectives established for awards to certified
28 SBE/MBE firms, reporting both dollars awarded and expended. In
29 addition, the OEO shall report on the progress in achieving the
30 stated program objectives, including, but not limited to, enhancing
31 competition, establishing and building new business capacity, and
32 removing barriers to and eliminating disparities in the utilization of
33 available minority business enterprises and women business
34 enterprises on Board contracts.

- 1 B. The Board shall quarterly review the SBE/MBE Program to
2 determine whether the various contracting procedures used to
3 enhance SBE/MBE contract participation needs to be adjusted or
4 used more or less aggressively in future years to achieve the stated
5 program objectives.

6 **Minority/Women Business Enterprise Program**

7 The Minority/Women Business Enterprise (MWBE) Program is established to
8 enhance the bidding and selection opportunities of M/WBEs on certain contracts as
9 specifically provided in Board Policy 6610. The M/WBE Enterprise Program and its
10 certification procedure should be modified, adjusted and revised in accordance with
11 the results of the Disparity Study.

12 A. **Terms and Definitions**

- 13 1. ***Minority Ownership*** - minority ownership means that for:

- 14 a. Sole Proprietorship - a sole proprietor must be a
15 minority person or woman.
- 16 b. Partnership - a minority/woman individual's interest
17 must include at least fifty-one percent (51%) of the
18 ownership, profit/loss, voting control, and capital of
19 the partnership.
- 20 c. Corporation - minority/women must own at least
21 fifty-one percent (51%) of all voting stock, issued by a
22 corporation. No stock held in trust, or by any guardian
23 for a minor, shall be considered held by the
24 minority/woman individual, in determining ownership
25 and control.
- 26 d. Limited Liability Company (LLC) - minority/women
27 must control the management and operations, as well
28 as hold at least fifty-one percent (51%) of the
29 company's ownership interest.

30 A minority owner(s) also has voting rights to elect the board of
31 directors, chief executive officer and all other management
32 personnel.

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2. **Minority Person** - is a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens. The following groups are considered:
- a. An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin.
 - b. A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.
 - c. An Asian American, a person having origins of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.
 - d. A Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation as established by rule of the Department of Management Services.
 - e. An American born or naturalized woman.
 - f. A service-disabled veteran means a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of defense.

1 B. **MWBE Eligibility and Certification**

2 1. The OEO shall certify a company or other business entity as a
3 MWBE upon its submission of a completed certification form,
4 (MWBE Form-3920), supporting documentation, and a signed
5 affidavit stating that it meets the following criteria:

6 a. it employs 200 or fewer permanent full-time employees
7 and that, together with its affiliates, has a net worth of
8 not more than \$5 million

9 For sole proprietorships, the \$5 million net worth
10 requirement shall include both personal and business
11 investments.

12 b. it is owned and controlled by at least fifty-one
13 percent (51%) by a minority person/s who are
14 members of an insular group that is of a specific racial,
15 ethnic, or gender makeup or national origin which has
16 been subjected historically to disparate treatment due
17 to identification in and with that group resulting in an
18 underrepresentation of commercial enterprises under
19 the group's control, and whose management and daily
20 operations are controlled by such persons

21 A minority business enterprise may primarily involve
22 the practice of a profession.

23 c. ~~it has its principal place of business in Miami Dade~~
24 ~~County for at least one (1) year preceding the~~
25 ~~application~~ the business must have an actual place of
26 business in Miami-Dade County for at least one year
27 preceding the application and be registered as a vendor
28 with M-DCPS.

29 d. the business has an occupational license and all
30 required professional licenses and/or contractor
31 qualifier licenses

32 e. the owner of the business must have the required
33 professional license(s) and contractor qualification
34 license

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2. Other factors in determining ownership that will be considered shall include, but are not limited to the following:
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- a. Whether minority/women owners are entitled to share in the profits of the business, through salaries, bonuses, profit sharing, dividends, and all other benefits, commensurate their ownership.
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- b. Whether minority/women owners share in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.
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- c. Ownership by a minority person does not include ownership that is the result of a transfer from a nonminority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. The term "related immediate family group" means one (1) or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.
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- d. Minority/Women owners must also demonstrate control over the affairs, management, and operations, of the business. The discretion of minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) that would impact or usurp the minority/women owners' managerial and operational discretion.
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- Documents that establish control include but are not limited to: corporate bylaws, operating agreements, partnership agreements, management agreements or other agreements. Such documents should be free of restrictive language which dilutes a minority/woman owner(s)' control and prohibits him/her from making decisions.

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- 1) The minority/woman owner(s) must submit documentation demonstrating control through the authority and responsibility to sign company checks, for all bank accounts, and letters of credit, negotiate contracts on behalf of the business, signature responsibility for insurance, bid bonds, and performance and payment bonds, negotiate bank transactions, and guarantee all instruments which indebted the business.
- 2) Unless a business is a franchise, agreements for contractual support services that usurp a minority/woman owner's authority to control a company are not allowed.
- 3) Minority/Women owners shall control or supervise the hiring, firing and supervision of employees, and establishment of employment policies, wages, benefits and other employment conditions.
- 4) Minority/Women owners shall have knowledge and control of all financial matters of the business.
3. Upon receipt of MWBE certification or re-certification applications, the OEO shall review all enclosed forms, affidavits and documentation, and determine whether the applicant satisfies the eligibility requirements. All applicants shall be notified in writing as to whether they are eligible. The OEO shall also provide to ineligible applicants in writing the basis for the denial of eligibility and the right to request an appeal. Applicants determined ineligible shall not be eligible to submit a new application for at least one (1) year after the date of the notice of denial of eligibility.
4. All certified M/WBEs will be included in the District's M/WBE Directory which will be regularly updated and provided to school sites.

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5. M/WBEs must notify the OEO within fifteen (15) days, of any material changes to the company's ownership and/or management of the firm. Any misrepresentation by a company of its M/WBE status shall be grounds for termination of any contract awarded based on the misrepresentation. Violations may also subject the signatories to any other statutory penalties and Board policies.
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6. M/WBE certification shall be valid for a ~~two (2)~~ three (3) year period. Certified M/BWEs shall not request a change in their minority/woman designation, to another minority designation during the certification period, unless changes are due to extenuating circumstances.
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7. The Board may honor a valid minority business certification granted by another agency if the agency's requirements are consistent with the District's M/BWE certification criteria. The Superintendent may develop procedures to implement this policy.
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8. An M/WBE must apply for recertification at least thirty (30) days prior to the certification expiration. A Board M/WBE Recertification Form may be submitted only if an M/WBE's certificate has not expired and no material changes have occurred in the ownership and control of the M/WBE. If certification has expired, the M/WBE must submit a new application.
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9. An M/WBE may be decertified for failure to comply with the Board's M/WBE policies and procedures regarding requests for information or documents pertaining to ownership, control, or operation of the business; failure to submit a complete M/WBE Recertification Application; debarment; or by written request from the firm's minority/women owners for voluntary removal from the MBWE Directory.

1 C. **Appeals**

2 Applicants denied certification or recertification as an M/WBE may
3 appeal to the Superintendent. A written request to appeal must be
4 received by the Superintendent within five (5) days of the date of the
5 written notice. Upon receipt of a timely notice of appeal, the
6 Superintendent or designee shall conduct a hearing. The
7 Superintendent shall develop procedures for the appeal process and
8 report quarterly to the Board on the status of appeals.

9 F.S. 287.093, 607.11, 1001.41(2), 1013.46(1)(b)

10 Revised 11/21/12

11 Revised 1/16/13

12 Revised 9/3/13

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